HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Misc. Application No.327 of 2006

Chandra Shekhar Joshi
S/o late Shri Prem Ballabh Joshi
R/o 24/A Gyanlok Colony Kankhal
P.S. Kankhal, District Haridwar ...Applicant

Versus

1. State of Uttaranchal through SSP Haridwar
2. S.H.O., P.S. Kankhal
   District Haridwar
3. Swami Jyotimayanand
   Assistant General Secretary
   Shri Anand Mayi Sangh
   Haridwar .....Respondents

Sri R. S. Sammal learned counsel for the applicant.
Sri Amit Bhatt learned A.G.A.

Hon'ble J. C. S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the chargesheet No.9/2006 in case crime No.81/2005 and cognizance order dated 19.04.2006 passed by the Judicial Magistrate, Haridwar in case No.1594/2006 State Vs. Chandra Shekhar Joshi under section 406, 419, 420, 471, 120-B IPC P.S. Kankhal, District Haridwar.

2. Brief facts of the case are that the respondent No.3-Swami Jyotirmayanand, Assistant General Secretary, Shri Shri Anandmayi Sangh Haridwar lodged an FIR at the police station Kankhal, District Haridwar on 29.08.2005 alleging therein the applicant was an employee of Shri Shri Anandmayi Singh Haridwar (hereinafter referred as 'Sangh'). He was posted as Assistant Accountant in the said 'Sangh' and he was in-charge of the cash. The applicant used to keep the bank

account of the 'Sangh'. He also used to keep the cheque book, pass books and bank statement of the 'Sangh'. It has been alleged that the applicant obtained the signature of Swami Jyotimayanand on the blank cheque which was payable to "yourself". The applicant omitted the word "your" and as such the word "self" remained on the cheque. In this way, the applicant has misappropriated a sum of Rs.25,66,035/- of the 'Sangh' by forged investment and certificates and letters. The incurred amount has been shown in Sardar Sarovar Yojana. But, from the inquires it was revealed that no such amount has been invested in that Yojana. The police investigated the matter and submitted the chargesheet against the applicant. Thereafter, the learned Magistrate took cognizance against the applicant vide order dated 19.04.2006. Feeling aggrieved by this, the applicant preferred the present petition.

3. Learned counsel for the applicant contended that there is no evidence against the applicant. It was further contended that the statements of Pushraj Pandey and Chandan Didi are not reliable and cogent. It was further contended that the I.O. never sent any of the documents or letters to the handwriting expert so as to ascertain as to whether the said signatures have been made by the applicant or not. Learned AGA refuted the contention. Perusal of the record shows that the witnesses have supported the version of the FIR. It has been pointed out that Chandan Didi has admitted her signatures on the cheques, but she could not state under what circumstances she signed over the cheques. She has stated in her statement recorded under section 161 Cr.P.C. that the said cheques were forged and she had no knowledge about the forgery. Moreover, the

contention raised on behalf of the applicant is a subject matter of evidence. This plea can be raised by the applicant during trial. The trial court can only evaluate the evidence of the applicant. Now, it is to be decided whether the version of the applicant is correct or the version of the 'Sangh' is correct. It is a question of fact, which has to be decided during the trial. This court cannot evaluate the disputed facts of the case. This Court cannot decide as to whether the evidence is reliable or not. It has been held by the Hon'ble Apex Court in M. Narayandas Vs. State of Karnataka 2004 Cri.L.J. p/822 that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprise. It has also been held in State of Karnataka Vs. M. Devendrappa & another 2002(2) SBR p/151 that while exercising jurisdiction under section 482 Cr.P.C., the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial court.

4. It is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter of trial. While exercising jurisdiction under section 482 Cr.P.C., it is not possible for this Court to

act as if it is a trial court. {State of M.P. Vs. Awadh Kishore Gupta and others SCC (Cri) 2004 p/353}.

5. In view of the above, the petition lacks merit and is dismissed.

(J.C. S. Rawat, J.)

Dated 17.05.2006
LSR